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*Proposed Interim Class Counsel*

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

IN RE: 23ANDME, INC., CUSTOMER DATA  
SECURITY BREACH LITIGATION

MDL No. 3098

Master Case No. 3:23-cv-05147-EMC

This Document Relates to:

ALL ACTIONS

**JOINT DECLARATION OF GAYLE M. BLATT  
AND M. ANDERSON BERRY IN SUPPORT OF  
PLAINTIFFS' MOTION TO APPOINT M.  
ANDERSON BERRY AND GAYLE M. BLATT  
AS INTERIM CO-LEAD CLASS COUNSEL  
AND MELISSA K. EMERT AND MAUREEN K.  
BERG AS EXECUTIVE COMMITTEE  
MEMBERS FOR THE CLASS**

**Date: May 30, 2024**

**Time: 1:30 p.m.**

**Courtroom: 5, 17<sup>th</sup> Floor**

1 We, GAYLE M. BLATT and M. ANDERSON BERRY, declare:

2 1. We are attorneys licensed and admitted to practice before all the courts of the State of  
3 California, including the United States District Courts, and are partners in our respective firms, Casey Gerry  
4 Schenk Francavilla Blatt & Penfield, LLP (“Casey Gerry”), and Clayeo C. Arnold, APC (“Arnold Law  
5 Firm”), and we are attorneys of record for certain Plaintiffs herein.

6 2. This declaration is filed in support of Plaintiffs Monica Santana, Paula Kleynburd, Bonnie  
7 Eden, Daniel Pinho, Thomas Seawright, Pamela Zager-Maya, Adriane Farmer, Harold Velez, and Brianna  
8 Sorenson’s Motion to Appoint M. Anderson Berry and Gayle M. Blatt as Interim Co-Lead Class Counsel  
9 and Melissa K. Emert and Maureen K. Berg as Executive Committee Members for the Class.

10 3. We have been engaged in working on this matter since the earliest filings in October 2023.  
11 Casey Gerry, the Arnold Law Firm (and our co-movants) have done extensive work and committed  
12 significant resources to investigating the potential legal issues and claims in this action, speaking with  
13 numerous affected 23andMe consumers, researching and reviewing all publicly available information  
14 about the breach, its cause, the Dark Web sales and status, and participated in preparing and filing  
15 complaints on behalf of Plaintiffs and putative class. We have retained and worked closely with a cyber  
16 security expert and a leader in business valuations throughout the litigation of this case to date. Utilization  
17 of these consultants/experts were important in light of the various issues facing the Plaintiffs and the  
18 proposed class. We opposed the requested stay in this matter, and prepared a motion for corrective notice  
19 in light of the Defendant’s dissemination of revised Terms of Service after our class action cases were filed.

20 4. We have also been engaged in ongoing settlement discussions, along with Norm Siegel and  
21 others, since the end of January 2024 when the initial mediation in this matter took place. The case is not  
22 settled; however, we believe for various reasons it is in the best interests of the class that settlement  
23 possibilities continue to be explored. In this regard, we have consulted with two Settlement Administrators  
24 to consider ways in which any resolution on a class wide basis can result in a desired participation rate.

25 5. Although we believe settlement negotiations should continue, at the same time, we believe  
26 that the litigation course should be charted, and the case scheduled to move along so that resolution, in  
27 whatever form, is achieved in a fair time frame.  
28



12. I am a former President of the Consumer Attorneys of San Diego, a former board member of the Consumer Attorneys of California and am a Past President of the San Diego County Bar Foundation. I have been named one of the Top 50 Influential Professionals, San Diego Daily Transcript; Top 500 Influential Business Leaders, San Diego Business Journal; Southern California Super Lawyers Top 10 Lawyers in San Diego; Top 25 Women Lawyers in San Diego; SD Metro's San Diego's Top Attorneys; Law Dragon 500 Leading Plaintiff Consumer Lawyers 2019-2024; and I am named annually in Best Lawyers in America. I was honored to be selected jointly by the San Diego Chapter of ABOTA, the San Diego Defense Lawyers and the Consumer Attorneys of San Diego to receive the 2022 Broderick Award for Civility Integrity and Professionalism.

13. I have been named Best of the Bar by the San Diego Business Journal, and I have been honored with Three Outstanding Trial Lawyer Awards by the Consumer Attorneys of San Diego and have been named one of the San Diego Daily Transcript's Top Lawyers in San Diego. I serve on the Board of Trustees for California Western School of Law and am a Board member of Tom Homann Law Association Foundation.

14. Founded in 1947, Casey Gerry is a San Diego-based plaintiffs' law firm focusing on complex civil litigation, with an emphasis on consumer protection, class actions, product defects, and serious personal injury matters.

15. The firm has been involved in complex litigation for decades and continues to the present, including appointments to leadership roles in class actions at both the state and federal level, some of which are set forth below.

16. *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 (N.D. Cal.). In less than a year, Casey Gerry helped obtain settlements from Volkswagen totaling \$14.7 billion relating to their 2.0-liter engines. A further settlement involving 3.0-liter engines was negotiated with a value of at least \$1.2 billion. Also, Casey Gerry's work was crucial to getting a separate \$327.5 million settlement from defendant Bosch. Further, although the allegations were distinct, additional cases against Audi—the "*Audi CO2 Cases*," and Porsche - the "*Porsche Gasoline Emissions Cases*," MDL No. 2672 (N.D. Cal.), were consolidated in the Volkswagen Clean Diesel MDL, which resulted in settlements of \$96.5 million and \$80 million respectively.

1           17.     *In re: Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices and Products Liability*  
2     *Litigation*, 17-MD-2777 (N.D. Cal.), where we helped obtain a settlement of \$307,406,800 in  
3     compensation and an additional \$239.5 million in extended warranty benefits for approximately 100,000  
4     owners and lessees of EcoDiesel Jeep Grand Cherokees and Ram 1500 trucks.

5           18.     *In re: Apple Inc. Device Performance Litigation*, MDL No. 2827 (N.D. Cal.), alleged  
6     computer intrusion case which resulted in a settlement of over \$300 million.

7           19.     *In re: Wells Fargo Collateral Protection Insurance Litigation*, MDL No. 2797 (C.D. Cal.),  
8     Casey Gerry helped obtain a common fund settlement of \$423 million. Referring to the settlement, Judge  
9     Guilford stated, “this level of success reflects in part the skill and experience of class counsel, who have  
10    worked for many years litigating complex class actions like this one.” (Dkt. 338 at p. 7).

11          20.     Casey Gerry is also on the cutting edge of technological and legal developments. Recently,  
12     Casey Gerry secured a precedent-setting win against online retail titan *Amazon in Bolger v. Amazon.com,*  
13     *LLC*, 53 Cal.App.5th 431 (2020). This decision was the first state appellate level decision in the nation  
14     holding an online marketplace strictly liable for defective products sold by third-party vendors on  
15     the marketplace.

16          21.     Additionally, several Casey Gerry attorneys are members of American Board of Trial  
17     Advocates (ABOTA), two have been inducted into the International Academy of Trial Lawyers, and we  
18     have a member of the International Society of Barristers. Our attorneys have received over twenty  
19     Outstanding Trial Lawyer awards and several Trial Lawyer of the Year Awards from the Consumer  
20     Attorneys of San Diego.

21          22.     The complex litigation team focuses on privacy/data security litigation, automotive, and  
22     other class actions. Casey Gerry has significant experience prosecuting class actions addressing claims  
23     similar to those at issue here, and we are knowledgeable regarding the applicable law relevant to this case.

24          23.     In privacy, data security and breach litigation, I have been appointed to numerous lead and  
25     executive positions. I was appointed to the five-member Plaintiffs’ Executive Committee overseeing the  
26     litigation related to the massive Yahoo! data breaches, collectively at the time, the largest data breach in  
27     the world. (*In re: Yahoo! Inc. Customer Data Security Breach Litigation*, Case No. 16-MD-02752 (N.D.

Cal.)). I oversaw the drafting of the consolidated master complaint, opposed motions to dismiss, drafted discovery, took/defended depositions, worked with damages experts and participated in settlement negotiations that resulted in a common fund settlement of \$117,500,000.00.

24. I have had numerous other appointments in data security cases as well, some of which include: *In re: Warner Music Group Data Breach*, Case No. 1:20-cv-07473-PGG (S.D.N.Y.); *In re: Netgain Technology, LLC, Consumer Data Breach Litigation*, 21-cv-1210-SRN-LIB (D. Minn.); *DeSue v. 20/20 Eye Care Network, Inc. et al.*, Case No. 21-cv-61275-RAR (S.D. Fla.); *James v. Davaco, Inc. et al.*, Case No. 3:21-cv-02318-M (N.D. Tex.); *Pfeiffer et al. v. RadNet, Inc.*, Case No. 2:20-cv-09553-RGK-SK (C.D. Cal.); *Adkins v. Facebook, Inc.*, Case No. 18-05982-WHA (N.D. Cal.) (Law And Briefing Committee); *Tate v. EyeMed Vision Care, LLC*, Case No. 21-cv-00036-DRC (S.D. Ohio); *In re: Citrix Data Breach Litigation*, Case No. 19-cv-61350-RKA (S.D. Fla.); *Madrid v. Golden Valley Health Centers, Merced Super. Ct.*, Case No. 20-cv-01484; *Sung et al., v. Schurman Fine Papers d/b/a Schurman Retail Group*, Case No. 17-cv-02760-LB (N.D. Cal.); *In re: Sony Gaming Networks and Customer Data Security Breach Litigation*, Case No. 11-md-02258-AJB (S.D. Cal.); and *In re: US Fertility LLC Data Security Litigation*, No. 8:21-cv-002 99 (D. Md.).

25. In addition to my work on data privacy litigation, I also have held many other leadership roles, such as service on the Plaintiffs' Executive Committees in multidistrict litigation in: *In re: ZF- TRW Airbag Control Units Products Liability Litigation*, MDL No. 2905 (C.D. Cal); *In re: Intel Corp. CPU Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2828 (D. Or.); Liaison Counsel in *In re: Bank of America California Unemployment Benefits Litigation*, No. 21-md-02992-LAB (S.D. Cal.); Plaintiffs' Steering Committee in *In re: Chrysler Pacifica Fire Recall Products Liability Litigation*, No.2:22-cv-03040 DML-EAS (E.D. Mich.) and as interim co-lead counsel in *Cilluffo v. Subaru of America, Inc. et al.*, Case No. 23-cv-01897-RBK-MJS (D. N.J.).

26. Casey Gerry's legacy includes several historic cases as well. Casey Gerry was part of the trial team and played a leadership role in the Exxon Valdez litigation, representing over 1,000 individual clients who suffered economic injuries from the 1989 Exxon Valdez oil spill, which resulted in a \$5 billion verdict. Following a record-breaking verdict at the time, Casey Gerry continued to represent its clients



1 through appeals lasting more than two decades. That litigation culminated in a hearing before the United  
2 States Supreme Court 26 years after Casey Gerry's initial involvement.

3 27. Casey Gerry also played a lead role representing former California Governor Gray Davis in  
4 a Private Attorneys General Action relating to tobacco use. Casey Gerry's representation of Gray Davis  
5 helped lead to a global settlement of \$206 billion dollars with \$25 billion dollars for the State of California.  
6 Casey Gerry also filed the only wrongful death lawsuit in California that focused on smokeless tobacco.  
7 And in *In re: World War II Era Japanese Forced Labor Litigation*, MDL No. 1347, Casey Gerry  
8 represented World War II veterans forced to labor without compensation.

9 28. Following the September 11th terrorist attacks, Casey Gerry played a lead role in the  
10 Victims Compensation Fund, one of the largest pro bono programs in history. That program involved over  
11 1,000 lawyers working on a pro bono basis to represent victims of the September 11th terrorist attacks. The  
12 scope of that project cannot be overstated: 1,092 lawyers volunteered their service to help 1,745 individuals  
13 obtain over \$2.25 billion dollars in compensation, which required the complicated analysis and application  
14 of law from 70 states and countries regarding the recovery rights of heirs.

15 **M. ANDERSON BERRY'S EXPERIENCE**

16 29. Mr. Berry is the head of the Complex Litigation Department at the Arnold Law Firm, with  
17 an extensive background in privacy and consumer/government fraud litigation, actively participating in a  
18 currently sealed False Claims Act case involving widespread cybersecurity fraud upon the United States.  
19 Before joining the Arnold Law Firm in 2017, Mr. Berry worked as an Assistant United States Attorney for  
20 the Eastern District of California. As part of the Affirmative Civil Enforcement unit, Mr. Berry handled a  
21 wide variety of complex cases, recovering millions of dollars for the United States. While working as an  
22 Assistant United States Attorney Mr. Berry worked closely with diverse Federal and State agencies  
23 including the Federal Bureau of Investigations and the California Attorney General's office. Before  
24 working for the Department of Justice, Mr. Berry practiced at one of the world's largest law firms, Jones  
25 Day, where he represented clients in international arbitration and complex commercial litigation, including  
26 defending class action allegations.

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30. Mr. Berry is litigating a number of class action cases across the country involving data breaches, including the following matters where he has a leadership position: *In Re: Overby-Seawell Company Customer Data Security Breach*, No. 1:23-md-03056-SDG (N. Ga.) (Co-Lead Counsel); *In Re: Entertainment Partners Data Breach Litigation*, No. 2:23-cv-06546-CAS (C.D. Cal.) (Co-Lead Counsel); *In Re: Snap Finance Data Breach Litigation*, No. 2:22-cv-00761-TS (D. UT.) (Co-Lead Counsel); *Holmes v. Elephant Insurance Company, et al.*, No. 3:22-cv-00487-JAG (E.D.VA.) (Co-Lead Counsel); *In Re: Arthur J. Gallagher Data Breach Litigation*, No. 1:21-cv-04056 (N.D.Ill.) (Co-Lead Counsel); *In re: Mednax Servs., Inc., Customer Data Security Breach Litig.*, No. 21-MD-02994 (S.D. Fla.) (Executive Comm.); *Desue v. 20/20 Eye Care Network, Inc. et al.*, No. 0:21-cv-61275 (S.D. Fla.) (Executive Comm.); *Ware v. San Geronio Memorial Hosp.*, CVRI2301216 (Super. Ct. of CA, Riverside) (Co-Lead Counsel); *In re: Cerebral, Inc. Privacy Practices*, No. 2:23-cv-01803-FMO (C.D. Cal.) (Liaison Counsel); *In re: Orrick, Herrington & Sutcliffe, LLP Data Breach Litig.*, No. 3:23-cv-04089-SI (N.D. Cal.) (Plaintiffs' Steering Committee); *In re: Sequoia Benefits and Insurance Data Breach Litig.*, No. 3:22-cv-08217-RFL (N.D. Cal.) (Plaintiffs' Executive Committee) See Mr. Berry and Clayeo C. Arnold, APC's Biography attached hereto as **Exhibit B**.

31. Moreover, Mr. Berry has additional recent experience in District Courts in California, including this District, having been appointed class counsel in numerous data breach class action cases in this court, including: *In re: Ethos Technologies Inc. Data Breach Litig.*, No. 3:22-cv-09203-SK (N.D. Cal.); *In re: Blackhawk Network Data Breach Litig.*, No. 3:22-cv-07084-CRB (N.D. Cal.); *Remoundos v. LendUS, LLC*, No. 22-cv-00749-EMC (N.D. Cal.); *Bitmouni v. Paysafe Payment Processing Solutions, LLC*, No. 3:21-cv-00641-JCS (N.D. Cal.); *In re: Hanna Andersson and Salesforce.com Data Breach Litig.*, No. 3:20-cv-00812-EMC (N.D. Cal.); *Myron Schellhorn et al v. Timios, Inc.*, No. 2:21-cv-08661-VAP-JC (C.D. Cal.), *Hashemi et al. v. Bosley, Inc.*, No. 2:21-cv-00946 (CD. Cal.), *Bowdle v. King's Seafood Co. LLC*, No. 8:21-cv-01784-CJC-JDE, (CD. Cal.), and *In Re: Entertainment Partners Data Breach Litigation*, No. 2:23-cv-06546-CAS-PVCx (CD. Cal.).

32. Founded in 1975 by Clayeo C. Arnold, the Arnold Law Firm is a litigation-oriented practice with locations in Sacramento and Los Angeles, California. In keeping with its founding principles, the firm



1 consciously works for the interests of individual people and small businesses — not for large corporations  
2 or insurance companies.

3 33. The firm’s team of twelve attorneys collectively encompass a broad and diverse professional  
4 background, including plaintiff contingency work, public entity representation, criminal defense, and civil  
5 defense. We have current and past board members of Capital City Trial Lawyers Association, as well as  
6 members of numerous prestigious professional organizations, including the American Board of Trial  
7 Advocates, American Association for Justice, Association of Trial Lawyers of America, Sacramento  
8 County Bar Association, and Consumer Attorneys of California.

9 34. For over four decades the Arnold Law Firm has developed a respected and extensive  
10 network of co-counsel and experienced contract counsel to rapidly expand our capabilities as necessary on  
11 an ad hoc basis (e.g., document review). We employ a robust staff of highly qualified and experienced legal  
12 staff including assistants and paralegals to ensure that attorney time is spent in the most efficient manner  
13 possible.

14 35. The Arnold Law Firm employs cutting edge technology to increase productivity thereby  
15 resulting in more efficient and effective legal representation and driving excellent results on behalf of its  
16 clients. Specifically, the firm increases its efficiency by using numerous forms of legal and practice  
17 management software including template software, client management software, and secure internet-based  
18 client management for mass tort or multi-plaintiff litigation. We also invest in appropriate billing and  
19 tracking software for contemporaneous hourly record keeping.

20 **MELISSA R. EMERT’S AND MAUREEN K. BERG’S EXPERIENCE**

21 36. Our application for Interim Co-Lead Class Counsel includes two proposed members of a  
22 Plaintiffs’ Executive Committee, Melissa R. Emert of Kantrowitz, Goldhamer & Graifman, PC. and  
23 Maureen K. Berg. of Lockridge Grindal Nauen, PLLP. Both Ms. Emert and Ms. Berg bring substantial  
24 experience litigating data privacy class actions and the resources of both of their firms, as can be seen from  
25 their firm biographies. Ms. Emert, and Kantrowitz, Goldhamer & Graifman, PC’s firm biography is  
26 attached hereto as **Exhibit C**; Ms. Berg and Lockridge Grindal Nauen, PLLP’s firm biography is attached  
27 hereto as **Exhibit D**.

1 We declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct.

3 Executed on April 24, 2024, at San Diego, California.

4 By: /s/ Gayle M. Blatt  
5 GAYLE M. BLATT

6 Executed on April 24, 2024, at Sacramento, California.

7 By: /s/ M. Anderson Berry  
8 M. ANDERSON BERRY